IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 56 OF 1998.

Luis Telles D'Silva,
Landlord, r/o Loutoulim,
Salcete, Goa. ... Apppellant.

VERSUS

Deputy Collector
(Land Acquisition),
Margao, Goa. ... Respondent.

Shri Nitin Sardessai, Advocate for the Appellant.

Shri H.R. Bharne, Government Advocate for the Respondent.

CORAM: N.A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 29.03.2004.
DATE OF PRONOUNCING THE JUDGMENT: 7.04.2004.

J U D G M E N T:

This appeal is directed against the Judgment/Award dated 30.12.1997 of the learned Addl. District Judge, Margao.

2. Briefly stated, by Notification issued under Section 4(1) of the Land Acquisition Act, 1894 dated 28.5.87 an area of 1725 sq.mts. of the appellant's land was acquired for the construction of a road, and the L.A.O. by his Award dated 29.9.89 awarded to the appellant compensation at the rate of Rs.15/- per sq.m. and the appellant being dissatisfied with the same, sought reference to be made, claiming

compensation at the rate of Rs.260/- per sq.m. and the learned Addl. District Judge, Margao by his Award dated 30.12.97 was pleased to enhance the compensation from Rs.15/- per sq.m. to Rs.52/- per sq.m. based on an earlier Award pertaining to the same land, dated 31.3.87 given by the District Court.

3. The learned Addl. District Judge observed that the acquired land was situated at Curchorem close to the market, railway station and had amenities like water, electricity and was surrounded by buildings and therefore was fit for construction purpose. The learned Addl. District Judge further observed that the present acquisition was for the construction of a road in continuation of a road which was acquired by a previous acquisition of the year 1976 and for which the rate given by the LAO was of Rs.7/- per sq.m. was enhanced by the District Court by the Award dated 31.3.87 to Rs.25/- per sq.m. and since the nature of the land which was earlier acquired and the land which was presently acquired was the same and belonged to the appellant, the rate given by the District Court at the rate of Rs.25/- per sq.m. could form the basis for valuation of the land under present acquisition. The learned Addl. District Judge therefore granted increase to the appellant from the year 1976 to the

year 1987 and fixed the compensation payable at the rate of Rs.52/- per sq.m.

4. The first submission of learned Advocate Shri Sardessai is that the increase at 10% ought to have been granted on compounding basis. Elaborating the submission, learned Advocate Shri Sardessai submits that for the second year increase of rate ought to have been taken on Rs.27.50 assuming Rs.25/- was increased by Rs.2.50 for the first year. However, learned Advocate Shri Sardessai fairly concedes that he has not been able to lay his hands on any decided authority in support of his submission that increase in the market value of the land is to be granted on compounding basis. Shri Sardessai submits that the appellant should not be a loser because 10 years had lapsed after the first acquisition.

5. On the other hand, learned Govt. Advocate Shri Bharne submits that he too has not come across any case in which increase has been granted on compounding basis.

6. It is common knowledge that the price of land is by and large always on the increase and to make up for the said increase, increase in price is granted

whenever compensation is assessed on the basis of a sale deed which is prior to the date of Notification under Section 4(1) of the Land Acquisition Act, 1894. The closest case on the point of increase in value of the land is the case of **Special Land Acquisition Officer, BYDA, Bagalkot v. Mohd. Hanif Sahib Bawa Sahib** reported in A.I.R. 2002 S.C., 1558. In that case appreciation of value of land was given at 10% on the base price of Rs.3 for the year 1979, for the next seven years, then the market value of the land in the year 1985 would come to Rs.5.10 per sq.ft. and not Rs.6.85 per sq.ft. and with reference the Hon'ble Supreme Court observed that:-

> " .... We agree with the counsel for the appellant that the reference Court wrongly valued the land at Rs.6.85 per sq.ft. for the year 1985 taking the base price of the land at Rs.3/- per sq.ft. for the year 1979 on an appreciation of 10% per annum for every subsequent years. The appreciation of value of land at 10% on the base price of Rs.3/- per sq. ft. would increase the value of the land @ 0.30 paise per year. 0.30 paise multiplied by 7 would come to Rs.2.10 paise. If the appreciation in value of

> the land for the next seven years is taken at Rs.2.10 paise and added to the base value of Rs.3/-, the market value of the land under acquisition in the year 1985 would come to Rs.5.10 paise. We agree with the counsel for the respondents that deduction on account of development charges from the price fixed cannot be made as the base price of Rs.3/- had been determined in the earlier cases after taking into account the development charges. "

7. It can be seen from the above case that the Hon'ble Supreme Court did not grant the increase at 10% of compounding basis, but at a flat rate of 0.30 paise. In the case at hand, Rs.2.50 has been granted to the appellant on a flat rate and not on compounding basis. I am of the opinion that for the sake of continuity, uniformity and certainity increase in price ought not to be granted, as so far it has not been granted in any case,on compounding basis. In the circumstances, therefore, the first submission of learned Advocate Shri Sardessai deserves to be rejected.

8. The second submission of learned Advocate Shri Sardessai is that the learned Addl. District Judge ought to have assessed the market value on the basis

of the sale deed dated 17.3.87 which was produced at Exh.AW1/F. Shri Sardessai has submitted that there was no dispute that the plot of this sale deed was situated within a distance of about 1/2 km. from the acquired land. On the other hand, learned Govt. Advocate Shri Bharne has submitted that the appellant had not led any evidence to know what was the nature of the land of the said sale deed dated 17.3.87-Exh.AW1/F and I am inclined to accept the said submission of learned Govt. Advocate Shri Bharne. It is true that the appellant's attorney had stated that all the plots under the sale deeds produced by him were within half km. from the acquired property and were of the same nature, but there was no further corroboration from any other witness to the said bare statement of the appellant's attorney -AW.1 D'Silva. The appellant did examine one of the purchasers of the said plot of sale deed dated 17.3.87 as AW.5, but she was not able to throw any light either in terms of distance or on the nature of the property purchased by her. In fact, the learned Addl. District Judge had observed that the plot of sale deed Exh.AW1/F was a developed plot, but it was not known at what distance the same was situated from the acquired land or whether it was of the same nature so as to enable him to assess the value of the acquired land and that in

the absence of such details Exh.AW1/F could not form the basis of valuation for the acquired plot. I have no reason to disagree with the said observations of the learned Addl. District Judge.

9. In view of the above, I find there is no merit in this appeal and as a result, the same is hereby dismissed with no order as to costs.

N. A. BRITTO, J.

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